

228952

Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: FD 35380

2-24-2011

I hereby certify that I have electronically served Mr. John Heffner, SL&RG attorney.

I am submitting this comment that was read on 2/17/11 in Conejos, Colorado. It has the reference websites and I am attaching the manifests that were referenced in the comment.

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2-24-2011

FD35380 – San Luis & Rio Grande (SLRG) Railroad Petition for a Declaratory Order

Good morning, my name is Andrea Trujillo Guajardo. I am one of the founding board members of the citizen's non-profit group, Conejos County Clean Water, Inc. ("CCCW"), on behalf of the group I would like to thank you, the Surface Transportation Board ("Board") staff, for travelling to Conejos, Colorado to hear comment from all interested parties regarding the proposed transfer of radioactive, hazardous and toxic waste from truck to rail within 250 feet of the Rio San Antonio (River), a headwaters tributary to the Rio Grande (River). Welcome to Conejos County.

Please let this comment serve as a supplement to the comments CCCW has submitted electronically via the Board's website originally on October 12, 2010, subsequently supplemented on November 5, 2010, November 8, 2010, November 23, 2010, and December 8, 2010.

We would like to officially apologize for not submitting comment via the accelerated schedule proposed by SLRG in its original petition submitted to the Board, this requested that public comment be submitted by June 10, 2010. It was not due to a lack of interest in the petition, rather it was that we did not know it was an electronic forum to submit comment. We were waiting in Denver for a hearing on June 10, 2010. It has taken us a short amount of time to come up to speed on the parallel proceedings at the local, state and federal levels that surround this proposal. CCCW would also like to thank you for your patience since we do not have the funds to secure a railroad attorney. CCCW operates entirely on donations and small grants.

The Board declared this petition to have "novel" issues and specifically asked for public comments pertaining to the container and the waste, but not limited to those two items. I will be discussing in detail the bag, Lift-Pac IP1 ("bag"), and I will also be

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discussing an additional item pertaining to the ripeness of this petition. Finally, I will be submitting additional letters of support for the efforts made by CCCW for a federal site specific National Environmental Policy Act (NEPA) process, and additional documentation that CCCW promised to submit to the Board for review.

As originally stated in the October 12, 2010 comment submitted by CCCW, we assert the containers are neither original nor sealed to constitute original containers. We do know the definition for original containers does not explicitly exist in the Clean Railroads Act of 2008, 49 U.S.C. §§ 10501 (c) (2), 10908-10910 (CRA), and we further understand there is sparse case law to aid in that definition. I will qualify why the technical specifications of the bag and the procedures that EnergySolutions, and the SLRG implement while using the bag are a risk to the health and environment in Conejos County and therefore are not an original container as described in the CRA, since the intention of the CRA was to protect health and environment.

While the SLRG submitted in its response October 27, 2010 the certificate of conformance for the bag, they did not address the issue that the specific standards the bag is in conformance with do not require that the bag be impermeable. Please reference 49 CFR § 173.410, §.411, and ISO 1496-1. EnergySolutions representatives have confirmed the bag is not waterproof at local public hearings.

As described in the October 12, 2010 comment submitted by CCCW the bag is being used outside its intended design application. The bag was designed as a liner to be used in conjunction with a metal dumpster. As an example of the questionable procedures that are implemented by EnergySolutions and SLRG, please reference manifests from the demonstration of the radioactive, hazardous and toxic waste transfer,

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held south of Antonito, December 14, 2009. According to the manifest the bag was loaded with radioactive, hazardous and toxic waste on December 2, 2009 at Los Alamos National Laboratory (LANL), loaded onto a flat-bed truck (not a metal dumpster truck) and transferred to rail on December 14, 2009, the waste left Antonito on December 22, 2009, and arrived in Clive, Utah at the commercial radioactive waste dump operated by EnergySolutions on January 6, 2010. One manifest was obtained from David Rhodes, Department of Energy, Supervisor, ERP/D&D Team, Environmental Projects Office, during task force discussions and the other manifest is a picture that was taken the day of the demonstration. You can cross-reference the picture and the manifest to confirm the day of the demonstration and also use those two submittals to confirm that while Conejos County ("County") officials stopped the transfer in November of 2009, that does not account for the discrepancy in transit time from the estimated seven days (*See – "Enhancing Safety through Rail Shipments," LA-UR-10-00134 Fact Sheet, p.5*) that EnergySolutions anticipated the rail trip would take from Antonito to Clive, Utah to the over thirty days it took. The radioactive, hazardous and toxic waste that sat on the rail in November as a result of EnergySolutions complying with the County's request to stop transfers took even longer than the thirty days to arrive at the dump in Utah.

Please reference this one data point, the bag sat loaded for twelve days on the ground in Los Alamos. This allowed time for the radioactive, hazardous and toxic contaminated soil to sit on the ground. Since the soil is being excavated the Water Holding Capacity (WHC) is low, compaction is low, permeability is rapid, and porosity is large. This means the radioactive, hazardous and toxic contaminated water that exists naturally in the soil had twelve days due to gravity to migrate through the soil to pool at

the bottom of the bag. After twelve days the soil's WHC is high, compaction is high, permeability is slow and porosity is small. At that point in time the contaminated water had anywhere from 15,000 lbs of soil to 24,000 lbs of soil (which is the maximum capacity of the bag) exerting a downward static force on it. This means the moisture accumulated at the bottom of the bag would need to be mechanically aerated through the radioactive, hazardous and toxic soil to move away from the permeable seams of the bag. (See – soils.tfree.wsu.edu/mg/physical.ht). The radioactive, hazardous and toxic soil is not mechanically aerated once it is loaded in the bag.

During discussions with the vendor of the bag, PacTec, the seams of the bag are where the bags are most permeable. We know that radiouclides dissolve in water. (See -<http://des.nh.gov/organization/commissioner/pip/factsheets/dwgb/documents/dwgb-3-11.pdf>). To remove dissolved radionuclides from water anion exchange coupled with reverse osmosis filtration is needed. In our case, the only barrier from our health and environment to the radioactive, hazardous and contaminated water is the bag, which is neither anion exchange nor reverse osmosis filtration. (See - <http://www.pactecinc.com/liftbags.cfm>). Therefore, the contaminated water that permeates the seams of the bag is radioactive, hazardous and toxic.

On, December 14, 2009 when the compromised bags were loaded on the flat-bed truck the contaminated water was allowed to pool beneath the bags in transit from Los Alamos to Antonito, and did not have but approximately 1.5 hours (transit time assuming a travel speed of 60 miles/hour to transfer point south of Antonito) for the water to push back against the compacted soil to the top of the bag. Due to the velocity profile created around the flat-bed truck due to Bernoulli's principle the bags are protected from air

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pressure behind the cab of the flat-bed truck and not submitted to forces to overcome the downward static pressure exerted on the contaminated water. (See - <http://library.thinkquest.org/27948/bernoulli.html>). Therefore, the contaminated water was allowed to drip off the flat-bed trucks in transit to Antonito and at the transfer site. Additionally, in the future while parked behind the chain link fence the bags will have up to ten days to drip off the flat-bed truck and migrate to the Rio San Antonio.

Additionally, as asserted during the public hearing before the Board of County Commissioners on November 4, 2010, Bret Rogers, Senior Vice-President, EnergySolutions, asserted the bag will tear in temperatures where water freezes or 32°F. The average temperatures near Antonito, Colorado fall well below the freezing temperature of water consistently. (See - <http://www.weather.com/outlook/health/fitness/wxclimatology/monthly/graph/81120>).

The bag is designed to be in constant motion in a metal dumpster, not to be loaded and left on the ground for twelve days, loaded on a flat-bed truck where the bags are allowed to leak, and parked near a river behind a chain link fence where the bags are allowed to leak into a river. Additionally, in the common extreme cold temperature the bags can rip and allow the radioactive, hazardous and toxic soil to fall to the ground. The bags are not designed to protect health and environment but rather are designed to line a metal dumpster.

The bag is our focus since the intermodal metal dumpsters cannot be used in every situation of loading the radioactive, hazardous and toxic soil as asserted many times in task force discussions and public hearings. Please reference our October 12, 2010 comment for discussion of the intermodal bin.

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Aside from the specific areas the Board wanted to hear public comment on, I would like to address the area of ripeness for a ruling on this petition from the Board at this time. The SLRG in its response October 27, 2010 did not address whether contracts are in place. Presently, the campaign described in the petition is over. It was completed in July of 2010.

The SLRG has created an odd situation where it is petitioning the Board for a preemptive declaratory order when the proposed transfer site is unapproved at the federal level for use. Until a site specific NEPA process occurs this plan is premature. There is no federal authorization – this petition is not ripe for ruling.

At this time please accept the following for the public record:

- 1) Letters collected during a land canvass in support of CCCW's request for a site specific NEPA process (submitted via STB website).
- 2) A letter circulated amongst the Front Range of Colorado, where this waste will be travelling, and activist groups familiar with radioactive, hazardous and toxic waste in support of CCCW's request for a site specific NEPA process (submitted via STB website).
- 3) The resolution passed by the Board of County Commissioners to deny the permit application submitted by EnergySolutions (Conejos County Attorney will submit).
- 4) The resolution passed by the San Miguel Board of County Commissioners in opposition to the proposed truck to rail transfer of radioactive, hazardous and toxic waste (submitted via STB website).
- 5) Manifests referenced above (submitted via STB website).

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Thank you for your time and careful consideration of these matters.

in print or type. (Form designed for use on 12-1/2 inch typewriter.)

HMTF #: 09112198

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Form Approved OMB No. 2050-0038

UNIFORM HAZARDOUS WASTE MANIFEST		1. Generator ID Number HN0890010515	2. Page 1 of 1	3. Emergency Response Phone (505) 667-6211	4. Manifest Tracking Number 000366079 JJK
5. Generator's Name and Mailing Address LANG, LLC FOR US DOE P.O. Box 1663, NE J598, Tamer Amin Los Alamos, NM 87345 (505) 665-6158			Generator's Site Address (if different than mailing address) LANG, LLC FOR US DOE RONALD DE SOTEL, TA-39, NS-N998 LOS ALAMOS, NM 87345		
6. Transporter 1 Company Name HITTMAN TRANSPORTATION SERVICES, INC.			U.S. EPA ID Number TMD987783065		
7. Transporter 2 Company Name			U.S. EPA ID Number		
8. Designated Facility Name and Site Address Energy Solutions LLC Interstate 80, Exit 49 Clive, UT 84029 Facility's Phone: (435) 884-0155			U.S. EPA ID Number UTD982598898		
9a. ID#	9b. U.S. DOT Description (including Proper Shipping Name, Hazard Class, ID Number, and Packing Group (if any))	10. Containers No. Type		11. Total Quantity	12. Unit Wt./Vol.
X	1.80, UN3432, POLYCHLORINATED BIPHENYLS, SOLID, 9, II, (POLYCHLORINATED BIPHENYLS)	1	OTHER	6,804	K
14. Special Handling Instructions and Additional Information LINE #1-ERG #:171, OSVP #:					
PROG128					
15. GENERATOR'S/OWNER'S CERTIFICATION: I hereby declare that the contents of this manifest are fully and accurately described above by the proper shipping name, and are classified, packaged, sealed and labeled/shielded, and are in all respects in proper condition for transport according to applicable international and national governmental regulations. If export shipment and I am the Primary Exporter, I certify that the contents of this assignment conform to the terms of the attached EPA Acknowledgment of Consent. I certify that the waste characterization statement identified in 40 CFR 262.27(a) (1) is a large quantity generator) or (2) (1) is a small quantity generator) is true.					
Generator/Owner's Printed/Typed Name TAMER AMIN			Signature <i>[Signature]</i>		Month Day Year 12/12/09
16. International Shipments <input type="checkbox"/> Import to U.S. <input type="checkbox"/> Export from U.S. Port of entry/exit: Transporter signature (for exports only): Date leaving U.S.:					
17. Transporter Acknowledgment of Receipt of Materials Transporter 1 Printed/Typed Name Kirk P Smith Signature <i>[Signature]</i> Month Day Year 12/14/09 Transporter 2 Printed/Typed Name Jim Healy for USMC Signature <i>[Signature]</i> Month Day Year 12/22/09					
18. Discrepancy 18a. Discrepancy Indication Space <input type="checkbox"/> Quantity <input type="checkbox"/> Type <input type="checkbox"/> Residue <input type="checkbox"/> Partial Rejection <input type="checkbox"/> Full Rejection Manifest Reference Number:					
18b. Alternate Facility (or Generator) Facility's Phone:			U.S. EPA ID Number		
18c. Signature of Alternate Facility (or Generator)			Month Day Year		
19. Hazardous Waste Report Management Method Codes (i.e., codes for hazardous waste treatment, disposal, and recycling systems)					
1.	2.	3.	4.		
H132					
20. Designated Facility Owner or Operator: Certification of receipt of hazardous materials covered by the manifest except as noted in item 18a Printed/Typed Name J. Gardner Signature <i>[Signature]</i> Month Day Year 1/6/10					